

Senate Budget & Fiscal Review

Senator Steve Peace, Chair



REVISED

Subcommittee No. 3
on
Health, Human Services, Labor, and Veterans Affairs

AGENDA - Part 1

Senator Wesley Chesbro, Chair
Senator Ray Haynes
Senator Deborah Ortiz

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Saturday, May 18, 2002
4:00 PM
Room 4203

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559 LABOR AND WORKFORCE DEVELOPMENT AGENCY

The Administration would create a new labor agency pursuant to Reorganization Plan No. 1 of 2002.

The Governor proposes to include in the agency the Employment Development Department (EDD), the California Workforce Investment Board (CWIB), the Agriculture Labor Relations Board and the Department of Industrial Relations (DIR). The Administration proposes a \$1.8 million appropriation. Of this amount, \$348,000 would be offset by reductions in the budgets of EDD, CWIB and DIR.

The Administration proposes transferring 17 positions from EDD and DIR to staff the agency. Three positions would be transferred from the Department of Industrial Relations and the balance would be transferred from the Employment Development Department.

The agency would have the following staff: Secretary, Under Secretary, ten other CEA or exempt positions (*e.g.*, Deputy, Assistant, or Associate Secretaries), two professional staff, and three support staff. The Administration proposes establishing the positions and agency on July 1, 2002.

Analyst Concerned that the Labor Agency Is Overstaffed. The Analyst writes that the proposed staffing configuration “would oversee just two departments and two boards. As a point of comparison, the Health and Human Services Agency currently oversees 14 departments, with a total of 12 CEA and exempt positions (excluding the Secretary and Under Secretary).” The Analyst recommends rejecting three Assistant Secretary positions and a Deputy Secretary position.

Legislation Pending. Senator Alarcon has introduced a bill, SB 1236, to establish the agency and enumerate its powers. The bill is on the Senate Suspense file. The agency cannot be established in statute until January 1, 2003.

Staff recommend approval of the agency’s budget, effective January 1, 2003, contingent on enactment of Senator Alarcon’s bill.

8350 DEPARTMENT OF INDUSTRIAL RELATIONS

The mission of the Department of Industrial Relations (DIR) is to promote, protect and improve the health, safety and economic well being of workers. The department has three major programs: the adjudication of workers' compensation disputes, the prevention of industrial injuries and deaths, and the enforcement of laws relating to wages, hours and working conditions.

CONSENT AGENDA**January 10 Budget**

The department proposes to reduce by \$284,000 the budget of the Occupational Safety and Health Standards Board. The board is charged with adopting reasonable and enforceable workplace standards at least as effective as those adopted by federal OSHA. Of the \$284,000:

- \$75,000 is associated with an interagency agreement between the board and the California Building Standards Commission. Under the agreement and statutory law, the commission must review and approve standards adopted by the board. To achieve the \$75,000 in savings, statutory requirements must be repealed.

The staff of the Senate Industrial Relations Committee have reviewed the draft language, contained in RN 201047. They raise no policy or technical concerns with the language.

- \$209,000 is primarily associated with salaries and benefits of two positions, which the board proposes to eliminate.

Staff recommend approval of the reduction, elimination of the positions, and approval of the trailer bill language.

Finance Letters

The department proposes the following changes as part of the May Revision:

- ***Loans for New Programs.*** Effective January 1, 2000, statutory law mandates two new enforcement programs, the amusement ride safety and garment manufacturers regulation programs. The programs are to be funded with industry fees, imposed only after the department promulgates regulations. In order to expedite the programs' start up, the Legislature authorized a General Fund loan to provide cash until the fees were collected. The loans were to be repaid when the
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fees were collected in the current year. The Finance Letter notifies the Legislature that the fees will not be imposed until the budget year. It requests that the loan repayment be rescheduled from June 30, 2002 to June 30, 2003.

- ***Payment for Mandates Deferred.*** The May Revision proposes deferring payments on two local mandates which are funded in the department's budget. Specifically, the Firefighters' Cancer Presumption (Chapter 1568, Statutes of 1982) and the Peace Officers' Cancer Presumption (Chapter 1171, Statutes of 1989). The deferral reduces the state's payment for the costs of these two local mandates, for a budget-year savings of nearly \$1.5 million. This deferral neither eliminates the state's obligation to pay for the mandate nor does it remove the local obligation to meet statutory requirements.
- ***Redirection.*** The May Revision proposes reducing DIR's budget by \$212,000 (General Fund) and \$54,000 (Federal Trust Funds), as the positions associated with this funding will be transferred to the new Labor Agency.
- ***Workers' Compensation Studies.*** The May Revision deletes funding for the studies, for a savings of \$1.2 million.

Staff recommend approval of these proposals (the action on the redirection should be consistent with the action on the Labor Agency's budget).

BUDGET ISSUES

1. Implementation of AB 749 (Calderon)

What is AB 749? On February 15, 2002, the Governor signed AB 749 (Calderon). The bill makes various changes in the workers compensation law intended to reduce program costs and increase benefits.

The May Revision addresses some of the changes contained in the bill. Specifically:

- *Commission on Health and Safety in Workers' Compensation (CHSWC).* The commission, created in 1993, oversees the health and safety of workers' compensation systems. AB 749 earmarks revenues from the Workers Compensation Administration Revolving Fund for the commission.

The May Revision proposes to increase the commission's funding from the Workers Compensation Administration Revolving Fund. These appropriations are offset by reduced appropriations from the Workers Health and Safety Revolving Fund.

- *Loss Control Certification Program.* AB 749 eliminated the certification program (effective January 1, 2003). The May Revision proposes to eliminate the program in the budget year, and reduces the department's budget by \$404,000. It proposes to eliminate nine positions.

Additional Issues Associated with the Implementation of AB 749

The May Revision does not address all the changes contained in the bill, however. Important areas that need to be addressed include:

- *Workers' Compensation Fraud Investigations and Prevention.* AB 749 requires the department to increase investigations in employer and insurer fraud.
 - *Staffing at the Division of Workers' Compensation.* To be successful, the reforms contained in AB 749 must be implemented. Staff estimate that the division will need about 62 new positions to meet the requirements of AB 749.
 - *Studies by the CHSWC.* AB 749 requires the commission to complete three studies of cost-saving measures contained in the bill. Staff estimate that the studies would cost about \$1.3 million to complete over a two-year timeframe. Of this amount, the budget-year costs would be about \$670,000.
 - *Training Grants in High-Hazard Areas.* The department is to provide health and safety training grants in hazardous industries.
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Staff Recommendations

1. *Adopt the May Revision.*
2. *Appropriate \$1 million (General Fund) for increased fraud prevention activities.*
3. *Appropriate \$670,000 (General Fund) to begin the studies mandated by AB 749. A similar appropriation will be necessary in 2003-04.*
4. *Appropriate \$4.6 million (General Fund) to staff the Division of Workers' Compensation.* The positions to be established should include: 1-Supervising Workers' Compensation Compliance Officer, 4-Senior Workers' Compensation Compliance Officers, 9-Workers' Compensation Compliance Officers, 4-Workers' Compensation Consultants, 5-Workers Compensation Rehabilitation Consultant, 2-Program Technicians II, 1-Public Health Medical Administrator, 1-Presiding Workers' Compensation Judge, 2-Executive Secretaries, 1-Chief Hearing Reporter, 8-Workers' Compensation Judges, 8-Senior Legal Typist, 8-Office Technician, 5-Hearing Reporters, 1-Industrial Relations Counsel IV, 2-Industrial Relations Counsel II.
5. *Appropriate \$588,000 (General Fund) for training grants.* Of this amount, \$163,000 would be for staffing and \$425,000 would be for contracts in 2002-03. The staff needed would be 1-Staff Services Manager II, 1-Staff Services Manager I, 1-Associate Governmental Program Analyst, and 1-Office Technician.

2. Industrial Welfare Commission (IWC)

According to the department, the IWC's primary responsibility is to set the minimum wage. In addition, DIR says that the commission:

- Is the only entity devoted to the specific mission of ascertaining "the hours, and conditions of labor and employment in the various occupations, trades and industries in which employees are employed in the state, and to investigate the health, safety and welfare of those employees."
- Provides interested parties a simple venue to petition for changes, exemptions, amendments, and/or deletions to regulations under the jurisdiction of the IWC. A petition is a letter to the commission and must be acted upon by the Commission within 120 days.

The IWC has jurisdiction over 17 wage orders. These orders regulate conditions for approximately 1.2 million employers in California.

The commission may adopt an order adjusting the minimum wage.

Performance Since the IWC Was Reconstituted. During the prior administration, the IWC suspended activities. Since the commission was reconstituted in 1999, it has convened wage boards, amended all existing wage orders and created a new wage order. It reviewed and increased the minimum wage in California during 2000. Under that order, the hourly minimum wage increased from \$5.75 to \$6.25 (effective January 1, 2001) and \$6.75 (effective January 1, 2002). The next wage order is not likely to become effective until January 1, 2004.

Staff recommendation. According to the Department of Finance, continued weakness in the stock market and the economy have caused state revenues to be below forecast. The revenue reduction, combined with various expenditure adjustments, necessitate the elimination of programs. Accordingly, staff recommend: (a) Adopting trailer bill language to adjust the minimum wage annually, and (b) Eliminating the commission, its appropriation and its authorized positions.

By requiring the annual adjustment of the minimum wage, the IWC's primary responsibility is made redundant. The commission's other underlying responsibilities can be assumed by the department itself.

Proposed Trailer Bill Language

Section 1182.10 is added to the Labor Code, to read:

- (a) The minimum wage is automatically adjusted on January 1 of each year.
 - (b) The automatically adjusted minimum wage is calculated by multiplying the minimum wage in effect on December 31 by the percentage of inflation that occurred during the previous year, and rounding off the sum to the nearest five cents (\$0.05). The Department of Industrial Relations shall publicize the automatically adjusted minimum wage.
 - (c) For purposes of this calculation, the following terms have the following meanings:
 - (1) "Percentage of inflation" means the percentage of inflation specified in the federal Consumer Price Index for urban wage earners and clerical workers, as published by the United States Department of Labor, or its successor index.
 - (2) "Previous year" means the 12-month period that ends September 1 of the calendar year prior to the adjustment.
 - (d) The first automatic adjustment to the minimum wage shall occur on January 1, 2003.
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3. Division of Occupational Safety and Health (DOSH)

The division enforces health and safety standards, investigates the causes of occupational deaths and injuries, and assists employers to maintain safe and healthy work environments.

The Administration estimates that DOSH will spend \$74.1 million in the current year. Of this, the General Fund supports about 35 percent (\$24.8 million). The January budget proposes to reduce General Fund support of DOSH by \$5.2 million in the budget year. The reduction would be offset by an increase from the Cal/OSHA Inspection and Consultation Fund. Even after the fund shift the Cal/OSHA Inspection and Consultation Fund will have an ending balance of \$7.5 million.

A. Redirection of Enforcement Staff

DOSH intends to redirect positions to enforcement and consultation activities, specifically targeting employers in high hazard industries.

The department does not detail which positions will be redirected or what they will be redirected to do. What are the positions currently doing for the department? How will the existing workload be accommodated? On what basis will the department make its determination to redirect specific positions?

Staff recommend: (a) Approval of the fund shift as proposed, and (b) Adoption of supplemental language detailing the nature of the redirections.

Proposed Supplemental Report Language

The department shall report the following to the chairs of the fiscal committees no later than January 10, 2003:

- (a) Which DOSH positions will be redirected to high hazard industries.
- (b) The basis on what the positions were redirected.
- (c) The work from which the positions were redirected.

The report shall provide sufficient information to sustain a thorough analysis.

B. Elevator Inspections

The Elevator Safety program is funded with special fund and General Fund revenues. The special fund source, the Elevator Inspection Special Fund, will end the budget year with a reserve of nearly \$4 million.

The May Revision proposes reducing General Fund support for the program by \$1 million, offset by an appropriation from the Elevator Inspection Special Fund.

Advocates for the program say that there is a backlog of inspections. The backlog exceeds 20,000 elevators. They request seven new inspectors at a cost of \$500,000.

Staff recommend: (a) Adopt the May Revision proposal and (b) Appropriate an additional \$500,000 from the Elevator Inspection Special Fund to add seven inspectors to begin addressing the backlog.

C. Proposed Transfers

The May Revision proposes transferring to the General Fund \$805,000 from the Workers' Compensation Administration Revolving Fund. To make this transfer, the Administration requires statutory changes to the revolving fund's authorizing statute.

The proposed trailer bill language will increase revenue deposited into the General Fund. It would broaden the use of the money deposited in the revolving fund for each year beginning in 2002-03.

Staff recommend limiting the amendment so that it applies only to the year beginning July 1, 2002. The Administration has not demonstrated why the statute should be broadened beyond the close of the budget year.

3. Division of Labor Standards Enforcement (DLSE)

DLSE monitors, investigates and adjudicates violations of the labor law which cover employer-employee relationships. Specifically, its:

- Bureau of Field Enforcement investigates complaints involving non-wage issues, such as complaints about child labor, workers compensation insurance, meal and rest periods, record keeping. It enforces the prevailing wage laws. It also investigates and resolves employee complaints of discrimination.
 - Licensing and registration unit registers garment manufacturers and contractors. The unit also licenses farm labor contractors, talent agents, supervisors and managers of minors in door-to-door sales, and industrial homework firms.
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- Legal section present civil cases, primarily involving issues of unpaid wages, prevailing wage laws, and discrimination.

Case Management. According to the department, “the division has never had an effective case management system.” Specifically:

- Management is unable to generate sufficient and timely information to accurately track enforcement actions. The division cannot adequately track all significant events within a case.
- Enforcement staff are unable to share information among the 19 field offices
- There is no system for identifying and tracking claims owed the state.
- There is no way for the public to access the system to monitor cases or track progress on enforcement actions.

Budget Proposal. The budget, as modified by the May Revision, proposes the purchase and installation of a case management system which is estimated to cost \$5 million over three years. Of this amount, about \$1 million would be financed with redirected baseline allocations. There would be on-going new annual costs of about \$300,000 associated with the system.

It is not clear if the Governor’s proposal contemplates allowing the public to access the system so it can monitor the progress of cases. If the subcommittee approves the proposed augmentation, the pro Tempore’s office requests that the system provide sufficient access to the public.

Staff recommend adoption of trailer bill and supplemental report language. As the system is going to take three years to implement, the subcommittee may wish to require the department to make progress reports on its implementation.

Proposed Trailer Bill Language

The Case Management System adopted in budget item 8350-001-0001 will be made accessible as follows: The Department shall procure a Case Management System that will have the capability to ultimately provide the public with free, web-based access to a searchable database containing information on the status of all complaints, citations and administrative proceedings, including the name of the investigator and/or attorney assigned to the matter and the final disposition of the matter; provided that the Department shall take appropriate steps to ensure that legal requirements are followed regarding the privacy rights of employees and witnesses. The intent of the Legislature is that when the database is operational, it will provide the public with similar information to the information offered by the federal courts through their PACER system, <https://pacer.uspci.uscourts.gov/index.html> and offered by the Establishment

Search of the Occupational Safety and Health Administration at <http://155.103.6.10/cgi-bin/est/est1>.

Proposed Supplemental Report Language

(a) On or before January 10, 2003, the department shall report to the fiscal committees on the progress of acquiring, installing and implementing the case management system. The report shall detail a timeline for installing the system and when the public will have access to the database. The report shall provide a revised estimate of system costs, by fiscal year, for the three years beginning with 2004-2005.

(b) On or before January 10, 2004, the department shall report to the fiscal committees the following information on its progress in implementing the case management system'

1. Relative to the timeline assumed in Budget Change Proposal 1 (revised 1/2/02), has the department met its schedule for acquiring and installing the system? Is the training schedule on schedule?
2. Does the department anticipate any delays in completing the implementation of the system by June 30, 2005?
3. When the system is installed, on what measurable bases will the department be able to determine whether the system has addressed all the issues listed under "Justification" on pages 4 through 6 in Budget Change Proposal 1 (revised 1/2/02)?
4. When will the system be available to the public in a manner similar to the one offered by the federal courts through their PACER system? When will the information provided to the public be similar to the information provided by the PACER system?

4. Division of Apprenticeship Standards (DAS)

Apprenticeship Training Grants. Under the training grants program, DIR allocates training funds. The grants are financed with allocations from the Apprenticeship Training Contribution Fund and the General Fund. The Governor proposes appropriating \$1.3 million for the grants program from the special fund and \$2.4 million from the General Fund in the budget year

The May Revision proposes to reduce the grants program by \$3.2 million. Of the amount reduced, the General Fund would save \$2 million and the Apprenticeship Training Contribution Fund would save \$1.2 million.

The Administration proposes to shift the balance in the Apprenticeship Training Contribution Fund to the General Fund for an increase to the General Fund reserve of \$1.4 million.

To reduce the appropriation and make the special fund transfer, the Administration seeks trailer bill language to: (1) authorize the deposit of the funds in the General Fund, and (2) broaden the use of the Apprenticeship Training Fund revenues.

Analysis. Given the subcommittee's tight timeframe, the Administration has provided very little information about this transaction. Of particular concern are two questions:

1. *Why not take all the training fund money?* The sweep leaves about \$105,000 (special fund) and \$201,000 (General Fund) allocated to the board. Why not take all the funds?
2. *Does the budget require broadening the authorizing statute?* The Administration seeks two changes to statute. The first would authorize the training fund money to be swept into the General Fund. It is not clear why the sweep also requires that the authorizing statute needs to be broadened so that the fund's revenues can be allocated for all activities of the Division of Apprenticeship Standards.

Staff recommend: (a) accepting the reduction, (b) authorizing the special fund transfer, and (c) adopting only the budget bill language necessary to make the transfer.

8450 WORKERS' COMPENSATION BENEFIT PROGRAM

This program provides benefits for permanent disabilities which arise from industrial injury to an employee who has suffered from a previous permanent disability. The program spent \$7.4 million and \$8.6 million (estimated) in 2000-01 and 2001-02 respectively. In January, the Governor proposed appropriating \$8.6 million for 2002-03, the same as the current year. Of the \$8.6 million, \$5.4 million would be from the General Fund.

The May Revision proposes a General Fund reduction of \$1 million, with an offsetting increase of \$1 million from the Subsequent Injuries Moneys Account. If the Legislature adopts this proposal, the Subsequent Injuries Moneys Account would end the year with an estimated reserve of \$1.5 million.

Staff recommendation. It is not clear why the Subsequent Injuries Moneys Account needs a reserve of \$1.5 million. Staff recommend reducing the General Fund appropriation to this program by an additional \$1 million and increasing the appropriation from the injuries account by a similar amount.

**8955-8966 DEPARTMENT OF VETERANS AFFAIRS and
VETERANS' HOMES OF CALIFORNIA**

Purpose and Description. The Department of Veterans Affairs (DVA) provides services to qualified veterans and eligible members of the National Guard.

CONSENT ITEMS

The May Revision proposes increasing reimbursements at the Yountville home to account for increased USDVA reimbursements by \$1,318,000 and reducing the home's General Fund appropriation by an offset amount. The increased funding is associated with a cost of living adjustment for per diem reimbursements authorized by the federal government. (The subcommittee already approved a General Fund reduction of \$1 million, and an increase in USDVA by a similar amount, in anticipation of the USDVA rate increase.)

- ***Caseload Reductions and USDVA Reimbursement Increases.*** The May Revision reflects a net change in the appropriations for Chula Vista and Barstow homes of \$56,000.
- ***Insurance.*** The May Revision proposes increasing the insurance payments at Barstow for \$25,000.
- ***Capital Outlay.*** The May Revision proposes several changes and adjustments to the department's capital outlay program, including adjusting the lease revenue payments at Barstow.

Staff recommend the subcommittee: (a) Reverse the subcommittee's prior action on the USDVA reimbursements, and (b) Adopt all the May Revision proposals (except the HIPPA proposal).

INFORMATION ONLY – MAY REVISION

The May Revision includes the following:

Health Insurance Portability and Accountability Act (HIPPA). The May Revision proposes an appropriation to the department for \$134,000 for assessment and development of an implementation plan for HIPPA.

The subcommittee will take an action in the health portion of the hearing to deal with this Finance Letter.
